

ASSEMBLY BILL

No. 1936

Introduced by Assembly Member De Leon

February 17, 2010

An act to amend Sections 17276, 17276.9, 17276.10, 24416, 24416.9, and 24416.10 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1936, as introduced, De Leon. Income taxation: deductions: net operating loss carrybacks.

The Personal Income Tax Law and the Corporation Tax Law allow various deductions in computing the income that is subject to the taxes imposed by those laws. Existing law allows a deduction for specified net operating losses, including allowing net operating loss carrybacks attributable to taxable years beginning on or after January 1, 2011.

This bill would disallow the use of net operating loss carrybacks by individual and corporate taxpayers.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided by Section 172 of the Internal Revenue Code, relating to a net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (d).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

1 (i) With respect to an amount equal to the net loss from the new
2 business, 100 percent of that amount shall be carried forward as
3 provided in subdivision (d).

4 (ii) With respect to the portion of the net operating loss that
5 exceeds the net loss from the new business, the applicable
6 percentage of that amount shall be carried forward as provided in
7 subdivision (d).

8 (C) For purposes of Section 172(b)(2) of the Internal Revenue
9 Code, the amount described in clause (ii) of subparagraph (B) shall
10 be absorbed before the amount described in clause (i) of
11 subparagraph (B).

12 (3) In the case of a taxpayer who has a net operating loss in any
13 taxable year beginning on or after January 1, 1994, and who
14 operates an eligible small business during that taxable year, each
15 of the following shall apply:

16 (A) If the net operating loss is equal to or less than the net loss
17 from the eligible small business, 100 percent of the net operating
18 loss shall be carried forward to the taxable years specified in
19 subdivision (d).

20 (B) If the net operating loss is greater than the net loss from the
21 eligible small business, the net operating loss shall be carried over
22 as follows:

23 (i) With respect to an amount equal to the net loss from the
24 eligible small business, 100 percent of that amount shall be carried
25 forward as provided in subdivision (d).

26 (ii) With respect to that portion of the net operating loss that
27 exceeds the net loss from the eligible small business, the applicable
28 percentage of that amount shall be carried forward as provided in
29 subdivision (d).

30 (C) For purposes of Section 172(b)(2) of the Internal Revenue
31 Code, the amount described in clause (ii) of subparagraph (B) shall
32 be absorbed before the amount described in clause (i) of
33 subparagraph (B).

34 (4) In the case of a taxpayer who has a net operating loss in a
35 taxable year beginning on or after January 1, 1994, and who
36 operates a business that qualifies as both a new business and an
37 eligible small business under this section, that business shall be
38 treated as a new business for the first three taxable years of the
39 new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of that paragraph, paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, the term “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

~~(e) Section 172(b)(1) of the Internal Revenue Code, relating to net operating loss carrybacks and carryovers and the years to which the loss may be carried, is modified as follows:~~

~~(1)~~

~~(c) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2011.~~

~~(2) A net operating loss attributable to taxable years beginning on or after January 1, 2011, shall be a net operating loss carryback to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein.~~

~~(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2011, and before January 1, 2012, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.~~

~~(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2012, and before January 1, 2013, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.~~

~~(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.~~

~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code,~~

1 relating to corporate equity reduction interest loss, shall apply as
2 provided:

3 ~~(4) A net operating loss carryback shall not be carried back to~~
4 ~~any taxable year beginning before January 1, 2009.~~

5 (d) (1) (A) For a net operating loss for any taxable year
6 beginning on or after January 1, 1987, and before January 1, 2000,
7 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to
8 years to which net operating losses may be carried, is modified to
9 substitute “five taxable years” in lieu of “20 taxable years” except
10 as otherwise provided in paragraphs (2) and (3).

11 (B) For a net operating loss for any taxable year beginning on
12 or after January 1, 2000, and before January 1, 2008, Section
13 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years
14 to which net operating losses may be carried, is modified to
15 substitute “10 taxable years” in lieu of “20 taxable years.”

16 (2) For any taxable year beginning before January 1, 2000, in
17 the case of a “new business,” the “five taxable years” in paragraph
18 (1) shall be modified to read as follows:

19 (A) “Eight taxable years” for a net operating loss attributable
20 to the first taxable year of that new business.

21 (B) “Seven taxable years” for a net operating loss attributable
22 to the second taxable year of that new business.

23 (C) “Six taxable years” for a net operating loss attributable to
24 the third taxable year of that new business.

25 (3) For any carryover of a net operating loss for which a
26 deduction is denied by Section 17276.3, the carryover period
27 specified in this subdivision shall be extended as follows:

28 (A) By one year for a net operating loss attributable to taxable
29 years beginning in 1991.

30 (B) By two years for a net operating loss attributable to taxable
31 years beginning prior to January 1, 1991.

32 (4) The net operating loss attributable to taxable years beginning
33 on or after January 1, 1987, and before January 1, 1994, shall be
34 a net operating loss carryover to each of the 10 taxable years
35 following the year of the loss if it is incurred by a taxpayer that is
36 under the jurisdiction of the court in a Title 11 or similar case at
37 any time during the income year. The loss carryover provided in
38 the preceding sentence shall not apply to any loss incurred after
39 the date the taxpayer is no longer under the jurisdiction of the court
40 in a Title 11 or similar case.

(e) For purposes of this section:

(1) “Eligible small business” means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the taxable year.

(2) Except as provided in subdivision (f), “new business” means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) “Title 11 or similar case” shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or “S” corporation paragraphs (1) and (2) shall be applied to the partnership or “S” corporation.

(f) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or

1 has been engaged in one or more trade or business activities in this
2 state within the preceding 36 months (“prior trade or business
3 activity”), and thereafter commences an additional trade or business
4 activity in this state, the additional trade or business activity shall
5 only be treated as a new business if the additional trade or business
6 activity is classified under a different division of the Standard
7 Industrial Classification (SIC) Manual published by the United
8 States Office of Management and Budget, 1987 edition, than are
9 any of the taxpayer’s (or any related person’s) current or prior
10 trade or business activities.

11 (3) In any case where a taxpayer, including all related persons,
12 is engaged in trade or business activities wholly outside of this
13 state and the taxpayer first commences doing business in this state
14 (within the meaning of Section 23101) after December 31, 1993
15 (other than by purchase or other acquisition described in paragraph
16 (1)), the trade or business activity shall be treated as a new business
17 under paragraph (2) of subdivision (e).

18 (4) In any case where the legal form under which a trade or
19 business activity is being conducted is changed, the change in form
20 shall be disregarded and the determination of whether the trade or
21 business activity is a new business shall be made by treating the
22 taxpayer as having purchased or otherwise acquired all or any
23 portion of the assets of an existing trade or business under the rules
24 of paragraph (1) of this subdivision.

25 (5) “Related person” shall mean any person that is related to
26 the taxpayer under either Section 267 or 318 of the Internal
27 Revenue Code.

28 (6) “Acquire” shall include any gift, inheritance, transfer incident
29 to divorce, or any other transfer, whether or not for consideration.

30 (7) (A) For taxable years beginning on or after January 1, 1997,
31 the term “new business” shall include any taxpayer that is engaged
32 in biopharmaceutical activities or other biotechnology activities
33 that are described in Codes 2833 to 2836, inclusive, of the Standard
34 Industrial Classification (SIC) Manual published by the United
35 States Office of Management and Budget, 1987 edition, and as
36 further amended, and that has not received regulatory approval for
37 any product from the United States Food and Drug Administration.

38 (B) For purposes of this paragraph:

39 (i) “Biopharmaceutical activities” means those activities that
40 use organisms or materials derived from organisms, and their

1 cellular, subcellular, or molecular components, in order to provide
2 pharmaceutical products for human or animal therapeutics and
3 diagnostics. Biopharmaceutical activities make use of living
4 organisms to make commercial products, as opposed to
5 pharmaceutical activities that make use of chemical compounds
6 to produce commercial products.

7 (ii) “Other biotechnology activities” means activities consisting
8 of the application of recombinant DNA technology to produce
9 commercial products, as well as activities regarding pharmaceutical
10 delivery systems designed to provide a measure of control over
11 the rate, duration, and site of pharmaceutical delivery.

12 (g) In computing the modifications under Section 172(d)(2) of
13 the Internal Revenue Code, relating to capital gains and losses of
14 taxpayers other than corporations, the exclusion provided by
15 Section 18152.5 shall not be allowed.

16 (h) Notwithstanding any provisions of this section to the
17 contrary, a deduction shall be allowed to a “qualified taxpayer” as
18 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,
19 and 17276.7.

20 (i) The Franchise Tax Board may prescribe appropriate
21 regulations to carry out the purposes of this section, including any
22 regulations necessary to prevent the avoidance of the purposes of
23 this section through splitups, shell corporations, partnerships, tiered
24 ownership structures, or otherwise.

25 (j) The Franchise Tax Board may reclassify any net operating
26 loss carryover determined under either paragraph (2) or (3) of
27 subdivision (b) as a net operating loss carryover under paragraph
28 (1) of subdivision (b) upon a showing that the reclassification is
29 necessary to prevent evasion of the purposes of this section.

30 (k) Except as otherwise provided, the amendments made by
31 Chapter 107 of the Statutes of 2000 shall apply to net operating
32 losses for taxable years beginning on or after January 1, 2000.

33 SEC. 2. Section 17276.9 of the Revenue and Taxation Code
34 is amended to read:

35 17276.9. (a) Notwithstanding Sections 17276, 17276.1,
36 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and
37 Section 172 of the Internal Revenue Code, no net operating loss
38 deduction shall be allowed for any taxable year beginning on or
39 after January 1, 2008, and before January 1, 2010.

(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

(2) By two years, for losses incurred in taxable years beginning before January 1, 2008.

~~(c) Notwithstanding subdivision (a), a net operating loss deduction shall be allowed for carryback of a net operating loss attributable to a taxable year beginning on or after January 1, 2011.~~

~~(d)~~

(c) The provisions of this section shall not apply to a taxpayer with net business income of less than five hundred thousand dollars (\$500,000) for the taxable year. For purposes of this subdivision, business income means:

(1) Income from a trade or business, whether conducted by the taxpayer or by a passthrough entity owned directly or indirectly by the taxpayer. For purposes of this paragraph, the term “passthrough entity” means a partnership or an “S” corporation.

(2) Income from rental activity.

(3) Income attributable to a farming business.

SEC. 3. Section 17276.10 of the Revenue and Taxation Code is amended to read:

17276.10. Notwithstanding Section 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss attributable to a taxable year beginning on or after January 1, 2008, shall be a net operating carryover to each of the 20 taxable years following the year of the loss, ~~and a net operating loss attributable to a taxable year beginning on or after January 1, 2011, shall also be a net operating loss carryback to each of the two taxable years preceding the taxable year of loss.~~

SEC. 4. Section 24416 of the Revenue and Taxation Code is amended to read:

24416. Except as provided in Sections 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (e).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall

1 be absorbed before the amount described in clause (i) of
2 subparagraph (B).

3 (3) In the case of a taxpayer who has a net operating loss in any
4 taxable year beginning on or after January 1, 1994, and who
5 operates an eligible small business during that taxable year, each
6 of the following shall apply:

7 (A) If the net operating loss is equal to or less than the net loss
8 from the eligible small business, 100 percent of the net operating
9 loss shall be carried forward to the taxable years specified in
10 paragraph (1) of subdivision (e).

11 (B) If the net operating loss is greater than the net loss from the
12 eligible small business, the net operating loss shall be carried over
13 as follows:

14 (i) With respect to an amount equal to the net loss from the
15 eligible small business, 100 percent of that amount shall be carried
16 forward as provided in subdivision (e).

17 (ii) With respect to that portion of the net operating loss that
18 exceeds the net loss from the eligible small business, the applicable
19 percentage of that amount shall be carried forward as provided in
20 subdivision (e).

21 (C) For purposes of Section 172(b)(2) of the Internal Revenue
22 Code, the amount described in clause (ii) of subparagraph (B) shall
23 be absorbed before the amount described in clause (i) of
24 subparagraph (B).

25 (4) In the case of a taxpayer who has a net operating loss in a
26 taxable year beginning on or after January 1, 1994, and who
27 operates a business that qualifies as both a new business and an
28 eligible small business under this section, that business shall be
29 treated as a new business for the first three taxable years of the
30 new business.

31 (5) In the case of a taxpayer who has a net operating loss in a
32 taxable year beginning on or after January 1, 1994, and who
33 operates more than one business, and more than one of those
34 businesses qualifies as either a new business or an eligible small
35 business under this section, paragraph (2) shall be applied first,
36 except that if there is any remaining portion of the net operating
37 loss after application of clause (i) of subparagraph (B) of paragraph
38 (2), paragraph (3) shall be applied to the remaining portion of the
39 net operating loss as though that remaining portion of the net
40 operating loss constituted the entire net operating loss.

(6) For purposes of this section, “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any taxable year in which the taxpayer has in effect a water’s-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water’s-edge election under Section 25110 had been in effect for the taxable year in which the loss was incurred.

~~(d) Section 172(b)(1) of the Internal Revenue Code, relating to net operating loss carrybacks and carryovers and the years to which the loss may be carried, is modified as follows:~~

~~(1)~~

~~(d) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2011.~~

~~(2) A net operating loss attributable to taxable years beginning on or after January 1, 2011, shall be a net operating loss carryback to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein.~~

~~(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2011, and before January 1, 2012, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.~~

~~(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2012, and before January 1, 2013, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.~~

~~(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.~~

~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest loss, shall apply as provided.~~

1 ~~(4) A net operating loss carryback shall not be carried back to~~
2 ~~any taxable year beginning before January 1, 2009.~~

3 (e) (1) (A) For a net operating loss for any taxable year
4 beginning on or after January 1, 1987, and before January 1, 2000,
5 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to
6 years to which net operating losses may be carried, is modified to
7 substitute “five taxable years” in lieu of “20 years” except as
8 otherwise provided in paragraphs (2), (3), and (4).

9 (B) For a net operating loss for any income year beginning on
10 or after January 1, 2000, and before January 1, 2008, Section
11 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years
12 to which net operating losses may be carried, is modified to
13 substitute “10 taxable years” in lieu of “20 taxable years.”

14 (2) For any income year beginning before January 1, 2000, in
15 the case of a “new business,” the “five taxable years” referred to
16 in paragraph (1) shall be modified to read as follows:

17 (A) “Eight taxable years” for a net operating loss attributable
18 to the first taxable year of that new business.

19 (B) “Seven taxable years” for a net operating loss attributable
20 to the second taxable year of that new business.

21 (C) “Six taxable years” for a net operating loss attributable to
22 the third taxable year of that new business.

23 (3) For any carryover of a net operating loss for which a
24 deduction is denied by Section 24416.3, the carryover period
25 specified in this subdivision shall be extended as follows:

26 (A) By one year for a net operating loss attributable to taxable
27 years beginning in 1991.

28 (B) By two years for a net operating loss attributable to taxable
29 years beginning prior to January 1, 1991.

30 (4) The net operating loss attributable to taxable years beginning
31 on or after January 1, 1987, and before January 1, 1994, shall be
32 a net operating loss carryover to each of the 10 taxable years
33 following the year of the loss if it is incurred by a corporation that
34 was either of the following:

35 (A) Under the jurisdiction of the court in a Title 11 or similar
36 case at any time prior to January 1, 1994. The loss carryover
37 provided in the preceding sentence shall not apply to any loss
38 incurred in an income year after the taxable year during which the
39 corporation is no longer under the jurisdiction of the court in a
40 Title 11 or similar case.

1 (B) In receipt of assets acquired in a transaction that qualifies
2 as a tax-free reorganization under Section 368(a)(1)(G) of the
3 Internal Revenue Code.

4 (f) For purposes of this section:

5 (1) “Eligible small business” means any trade or business that
6 has gross receipts, less returns and allowances, of less than one
7 million dollars (\$1,000,000) during the income year.

8 (2) Except as provided in subdivision (g), “new business” means
9 any trade or business activity that is first commenced in this state
10 on or after January 1, 1994.

11 (3) “Title 11 or similar case” shall have the same meaning as
12 in Section 368(a)(3) of the Internal Revenue Code.

13 (4) In the case of any trade or business activity conducted by a
14 partnership or an “S corporation,” paragraphs (1) and (2) shall be
15 applied to the partnership or “S corporation.”

16 (g) For purposes of this section, in determining whether a trade
17 or business activity qualifies as a new business under paragraph
18 (2) of subdivision (e), the following rules shall apply:

19 (1) In any case where a taxpayer purchases or otherwise acquires
20 all or any portion of the assets of an existing trade or business
21 (irrespective of the form of entity) that is doing business in this
22 state (within the meaning of Section 23101), the trade or business
23 thereafter conducted by the taxpayer (or any related person) shall
24 not be treated as a new business if the aggregate fair market value
25 of the acquired assets (including real, personal, tangible, and
26 intangible property) used by the taxpayer (or any related person)
27 in the conduct of its trade or business exceeds 20 percent of the
28 aggregate fair market value of the total assets of the trade or
29 business being conducted by the taxpayer (or any related person).
30 For purposes of this paragraph only, the following rules shall apply:

31 (A) The determination of the relative fair market values of the
32 acquired assets and the total assets shall be made as of the last day
33 of the first taxable year in which the taxpayer (or any related
34 person) first uses any of the acquired trade or business assets in
35 its business activity.

36 (B) Any acquired assets that constituted property described in
37 Section 1221(1) of the Internal Revenue Code in the hands of the
38 transferor shall not be treated as assets acquired from an existing
39 trade or business, unless those assets also constitute property

1 described in Section 1221(1) of the Internal Revenue Code in the
2 hands of the acquiring taxpayer (or related person).

3 (2) In any case where a taxpayer (or any related person) is
4 engaged in one or more trade or business activities in this state, or
5 has been engaged in one or more trade or business activities in this
6 state within the preceding 36 months (“prior trade or business
7 activity”), and thereafter commences an additional trade or business
8 activity in this state, the additional trade or business activity shall
9 only be treated as a new business if the additional trade or business
10 activity is classified under a different division of the Standard
11 Industrial Classification (SIC) Manual published by the United
12 States Office of Management and Budget, 1987 edition, than are
13 any of the taxpayer’s (or any related person’s) current or prior
14 trade or business activities.

15 (3) In any case where a taxpayer, including all related persons,
16 is engaged in trade or business activities wholly outside of this
17 state and the taxpayer first commences doing business in this state
18 (within the meaning of Section 23101) after December 31, 1993
19 (other than by purchase or other acquisition described in paragraph
20 (1)), the trade or business activity shall be treated as a new business
21 under paragraph (2) of subdivision (e).

22 (4) In any case where the legal form under which a trade or
23 business activity is being conducted is changed, the change in form
24 shall be disregarded and the determination of whether the trade or
25 business activity is a new business shall be made by treating the
26 taxpayer as having purchased or otherwise acquired all or any
27 portion of the assets of an existing trade or business under the rules
28 of paragraph (1) of this subdivision.

29 (5) “Related person” shall mean any person that is related to
30 the taxpayer under either Section 267 or 318 of the Internal
31 Revenue Code.

32 (6) “Acquire” shall include any transfer, whether or not for
33 consideration.

34 (7) (A) For taxable years beginning on or after January 1, 1997,
35 the term “new business” shall include any taxpayer that is engaged
36 in biopharmaceutical activities or other biotechnology activities
37 that are described in Codes 2833 to 2836, inclusive, of the Standard
38 Industrial Classification (SIC) Manual published by the United
39 States Office of Management and Budget, 1987 edition, and as

1 further amended, and that has not received regulatory approval for
2 any product from the United States Food and Drug Administration.

3 (B) For purposes of this paragraph:

4 (i) “Biopharmaceutical activities” means those activities that
5 use organisms or materials derived from organisms, and their
6 cellular, subcellular, or molecular components, in order to provide
7 pharmaceutical products for human or animal therapeutics and
8 diagnostics. Biopharmaceutical activities make use of living
9 organisms to make commercial products, as opposed to
10 pharmaceutical activities that make use of chemical compounds
11 to produce commercial products.

12 (ii) “Other biotechnology activities” means activities consisting
13 of the application of recombinant DNA technology to produce
14 commercial products, as well as activities regarding pharmaceutical
15 delivery systems designed to provide a measure of control over
16 the rate, duration, and site of pharmaceutical delivery.

17 (h) For purposes of corporations whose net income is determined
18 under Chapter 17 (commencing with Section 25101), Section
19 25108 shall apply to each of the following:

20 (1) The amount of net operating loss incurred in any taxable
21 year that may be carried forward to another taxable year.

22 (2) The amount of any loss carry forward that may be deducted
23 in any taxable year.

24 (i) The provisions of Section 172(b)(1)(D) of the Internal
25 Revenue Code, relating to bad debt losses of commercial banks,
26 shall not be applicable.

27 (j) The Franchise Tax Board may prescribe appropriate
28 regulations to carry out the purposes of this section, including any
29 regulations necessary to prevent the avoidance of the purposes of
30 this section through splitups, shell corporations, partnerships, tiered
31 ownership structures, or otherwise.

32 (k) The Franchise Tax Board may reclassify any net operating
33 loss carryover determined under either paragraph (2) or (3) of
34 subdivision (b) as a net operating loss carryover under paragraph
35 (1) of subdivision (b) upon a showing that the reclassification is
36 necessary to prevent evasion of the purposes of this section.

37 (l) Except as otherwise provided, the amendments made by
38 Chapter 107 of the Statutes of 2000 shall apply to net operating
39 losses for taxable years beginning on or after January 1, 2000.

1 SEC. 5. Section 24416.9 of the Revenue and Taxation Code
2 is amended to read:

3 24416.9. (a) Notwithstanding Sections 24416, 24416.1,
4 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7 of this code and
5 Section 172 of the Internal Revenue Code, no net operating loss
6 deduction shall be allowed for any taxable year beginning on or
7 after January 1, 2008, and before January 1, 2010.

8 (b) For any net operating loss or carryover of a net operating
9 loss for which a deduction is denied by subdivision (a), the
10 carryover period under Section 172 of the Internal Revenue Code
11 shall be extended as follows:

12 (1) By one year, for losses incurred in taxable years beginning
13 on or after January 1, 2008, and before January 1, 2009.

14 (2) By two years, for losses incurred in taxable years beginning
15 before January 1, 2008.

16 ~~(e) Notwithstanding subdivision (a), a net operating loss~~
17 ~~deduction shall be allowed for carryback of a net operating loss~~
18 ~~attributable to a taxable year beginning on or after January 1, 2011.~~

19 ~~(d)~~

20 (c) The provisions of this section shall not apply to a taxpayer
21 with income subject to tax under this part of less than five hundred
22 thousand dollars (\$500,000) for the taxable year.

23 SEC. 6. Section 24416.10 of the Revenue and Taxation Code
24 is amended to read:

25 24416.10. Notwithstanding Section 24416.1, 24416.2, 24416.4,
26 24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss
27 attributable to a taxable year beginning on or after January 1, 2008,
28 shall be a net operating carryover to each of the 20 taxable years
29 following the year of the loss, ~~and a net operating loss attributable~~
30 ~~to a taxable year beginning on or after January 1, 2011, shall also~~
31 ~~be a net operating loss carryback to each of the two taxable years~~
32 ~~preceding the taxable year of loss.~~

33 SEC. 7. This act provides for a tax levy within the meaning of
34 Article IV of the Constitution and shall go into immediate effect.